IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

TUESDAY, THE TWENTY EIGHTH DAY OF SEPTEMBER
TWO THOUSAND AND FOUR

PRESENT

THE HON'BLE MR JUSTICE A.GOPAL REDDY

WRIT PETITION NO : 788 of 2002

Between:

1. B.Chandrasen Reddy S/. Sri B.S.Reddy, aged 33 years,

resident of Basheerbagh, Hyderabad.

2. B.Vijayasen Reddy S/o B.S. Reddy, aged 31 years,

resident of Basheerbagh, Hyderabad.

3. B. Indrasen Reddy, S/o Sri B.S.Reddy, aged 29 years, resident of Basheerbagh, Hyderabad, represented by his General Power of Attorney,

Mr. B.Vijayasen Reddy

..... PETITIONERS

AND

1. The Collector, Hyderabad District
2. The Special Deputy Collector, Land Protection Cell, Office of the Collector, Hyderabad.
3. The Mandal Revenue Officer, Khairatabad Mandal, Hyderabad.
4. Association of Engineers, represented by Mr. B. Sudershan Reddy, Deputy Executive Engineer, R & B Department, Khairtabad, Hyderabad.
5. Mr. K.Naresh Kumar, Works Inspector, R&B Department, Hyderabad.
6. Mr. K.Ailaiah, Works Inspector, R&B Department, Hyderabad.
7. Mr.D.Babu, Works Inspector, R& B Department, Hyderabad.

.....RESPONDENTS

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court will be pleased to

issue a Writ of Mandamus or any other appropriate Writ or Writs, Order or direction, declaring the action of the respondents in trying to deprive the petitioners of their right and enjoyment over their property bearing Municipal Nos.6-3-549, 6-3-549/A. 6-3-549/A/1 and 6-3-549/B situated at Khairatabad, opposite to Medinova complex, Hyderabad and covered by the registered sale deed dt. 30-12-1998 as illegal and unconstitutional.

For the Petitioner: MR.K.RAGHUVEER REDDY, Advocate

For the Respondents 1 to 3: Advocate General for GP FOR REVENUE

For the respondents 4 to 7: None appeared

The Court made the following :

THE HON'BLE MR JUSTICE A.GOPAL REDDY

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W. P. No. 788/2002

ORAL ORDER:

The petitioners purchased property bearing Municipal Nos.6-3-549, 6-3-549/A, 6-3-549/A/1 and 6-3-549/B with appurtenant land, situate at Somajiguda, Hyderabad ad-measuring 1132 sq.yards, under a registered sale deed dt. 30-12-1998 from M/s. NCC Finance Limited, a Public Limited Company. It is stated that prior to the sale deed, petitioners entered into an agreement of sale after obtaining necessary permission under Income Tax Act and sale deed got registered in their favour. Since the date of registered sale deed, the petitioners have been in possession of the property. After purchase, the petitioners applied to the Municipal Corporation for necessary permission, after demolishing the old structures, and necessary permission was obtained from MCH in Permit NO.177/71 of 2001 dt. 6-12-2001. The land use was converted from residential to general commercial use in G.O.Ms.No.200 Municipal Administration and Urban Development (II) Department dt. 24-4-1998. After petitioners' purchase, an extent of 63.33 sq. yards was taken possession by the Municipal Corporation for widening of the road in April/May, 1999. Prior to the purchase of the property, the Assistant Engineer, R & B, Chief Engineer's Office, submitted a petition for eviction of the petitioners' vendor from the said premises bearing Municipal No.6-3-549 covering an extent of 1050 sq.yards before the Special Grade Deputy Collector and Estate Officer, Hyderabad and

Secunderabad (for short "the Estate Officer"). The Estate Officer after due enquiry, taking note of the perpetual injunction obtained by the petitioners' vendor's vendor in OS No.4795/1990 on the file of VIII Assistant Judge, City Civil Court at Hyderabad against Chief Engineer (R & B), Government of A.P. Erramanzil, Panjagutta, Hyderabad restraining the defendant and their men, servants, employees from interfering with the plaintiff's peaceful possession of the suit house bearing D.No.6-3-549/A/1 and after going through the rival claims of the parties and evidence adduced before him, observed that petitioners' vendor acquired ownership and possessory rights over the premises under sale deed and he cannot be termed as un-authorized occupant under Section 4 of A.P. Public Premises (Eviction of unauthorized occupants) Act, 1968 (for short "the Act") dropped the proceedings, holding that the petitioners' vendor is entitled to enjoy the peaceful possession of the land in view of the court decree and also as per the sale deed executed in his favour, the said order has become final.

After surrendering an extent of 63.33 for the purpose of road widening, petitioners constructed compound wall in the year 2001. While so, 4th respondent's office which is located in the Government building leased out to them and their office bearers including respondents 5 to 7 interfered with the possession of the petitioners, they lodged a complaint with Station House Officer, Panjagutta, who registered a case in Cr. No.968/2001 and reported the matter to XXIII Metropolitan Magistrate, Hyderabad for the offences punishable under Sections 447 and 427 IPC. In spite of the same, there was persistent intereference, the petitioners filed the present writ petition stating that the respondents 4 to 7 who are employees of Chief Engineer's Office cannot dispossess the petitioners as Chief Engineer failed to evict the petitioners' vendor's vendor under the provisions of the Act.

The Mandal Revenue Officer, Khairathabad Mandal filed a counter-affidavit on behalf of the respondents 1 to 3, stating as per the report submitted by the Deputy Municipal Commissioner, Circle-V that the premises bearing Municipal Nos.5-3-545 to 6-3-549 stand in the name of Public Works Department and is assessed to property tax (Govt., building) and the properties bearing premises Nos.6-3-549/A and 549/B stand in the name of A.G.K. Raju (NCC Finance Limited) assessed under un-authorized construction category and the petitioners have trespassed into the government land under the guise of purchasers from other trespassers. However, it is admitted that Municipal Corporation of Hyderabad has accorded construction

permission as per the directions issued by this court in WP No.20281/2001 dt. 27-9-2001, wherein this court directed the MCH not to insist for NOC from the Government while granting permission. Under the guise of permission, the petitioners are trying to make constructions over the land belonging to the Government, over which they have no right. It is denied of demolition of compound wall etc., stating it was made only for the purpose of filing the writ petition and disputes regarding title cannot be decided in a writ petition.

A reply affidavit has been filed reiterating the stand taken by the petitioners in the affidavit filed in support of the petitioners by denying that the land is under the control of Public Works Department. It is stated that proceedings initiated under the Act ended in favour of the petitioners' vendor and having failed to get the petitioners' vendor evicted, the respondents cannot now deprive the petitioners from their property and if at all they have any claim over the property, they can seek remedies available under civil laws.

Sri K.Raghuveera Reddy, learned counsel appearing for the petitioners contends that petitioners, after verifying the documents, purchased the property and from whom Municipal Corporation took possession of 63.33 sq.yards for the purpose of road widening. The petitioners entered into an agreement with the Developer as per the change of use in G.O.Ms.No.200 dt. 24-4-1998 and when they are proceeding with the construction, the respondents, who have no manner of right to interfere with the same having failed in their attempt to get the petitioners' vendor evicted from the suit schedule property and having suffered with a decree of perpetual injunction, cannot interfere with the construction.

Learned Advocate General rightly contended that it is not asserted by the petitioners that respondents 1 to 3 in any manner are interfering with the possession of the property of the petitioners nor about their demolition of compound wall. The complaint, if any lodged is only against respondents 4 to 7 and title of either parties cannot be decided in this writ petition.

As seen from the averments made and also documents produced along with the writ petition, it is evident that the petitioners' vendor purchased the property in the year 1995 under a registered sale deed against whom proceedings were initiated for eviction under the Act on the complaint made by the Assistant Engineer , P.W.D. (R & B) from the premises bearing No.6-3-549, covering an extent of 1050 sq.yards. On

such initiation of the proceedings, the Estate Officer issued a show cause notice under Section 4(1) of the Act calling upon the petitioners' vendor to show cause why he should not be evicted therefrom as it belongs to the Government. On petitioners' vendor filing his reply and on placing all the relevant material to establish his title and possession over the property and after conducting due enquiry the Estate Officer observed that the Assistant Engineer, P.W.D. has not established his case before him regarding Government's title of ownership and possession of the property, whereas petitioners' vendor was in possession of the property and is entitled to enjoy the peaceful possession of the land and no reason to order his eviction, and holding so dismissed the petition, which has attained finality under Section 10 of the Act. After petitioners purchased the property, Municipal Corporation acquired 63.33 sq.yards for the purpose of widening of the road, the land use has also been changed from residential to commercial through G.O.Ms.No.200 dt. 24-4-1998 for an extent of 946.5sq.metrs in favour of the petitioners' vendor, on payment of Rs.70988/- towards development charges, which clearly establish that the petitioners' vendor and after him the petitioners are in possession of the property and are entitled to continue in possession of the same, and they cannot be deprived of their possession. Infact, in the counter-affidavit filed by the third respondent, the allegation of the petitioners about demolition of the compound wall has been denied, obviously respondents cannot interfere with the possession of the property having failed in their attempt to get possession from the petitioners' vendor. In the counter-affidavit filed by respondents 1 to 3, it is stated the Public Works Department (Government) leased out a building and some land to the 4th respondent-Association for their office use. If that be the case, respondents 4 to 7 who have no independent claim over the property and claiming their right through respondents 1 to 3 cannot interfere with the possession of the petitioners.

The writ petition is accordingly disposed of. No costs.

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A.GOPAL REDDY,J

Dt. 28-9-2004

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To

1. The Collector, Hyderabad District
2. The Special Deputy Collector, Land Protection Cell, Office of the Collector, Hyderabad.
3. The Mandal Revenue Officer, Khairatabad Mandal, Hyderabad.
4. 2 CCs to the Govt., Pleader for Revenue, High Court Buildings, Hyderabad (OUT)

5. 2 CD copies